IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 225 OF 2006
AND
CRIMINAL APPLICATION NO. 226 OF 2006
IN
CRIMINAL APPLICATION NO. 3377 OF 2006

Shri Shaialesh C. Patel
and others. ... Applicants.

V/s.

The State of Maharashtra. ... Respondent.

Prakash Naik for the applicants.

Ms.S.D.Shinde, APP for the State.

CORAM: V.C.DAGA, J.

DATED: 5th October 2007.

P.C.:

. Heard learned counsel for the applicants and learned A.P.P. for the State.

2. The substantive application, being Application No.3377/2003, is directed against the order dated 25th August, 2000 passed in Criminal Case No.2420/P/1992 by the Additional Chief Metropolitan Magistrate, 43rd Court, Borivli, wherein the order refusing to discharge accused was a subject matter of challenge. When the above application was placed on board, vide conditional order dated 10th September, 2004,

applicant was directed to remove office objections. They were not removed. The order, being self-operative order, it operated. Consequently, application came to be dismissed.

3. Practically, after almost two years, application for restoration being Criminal Application No.225/2006 was moved with application for condonation of delay, i.e. in the month of March, 2006. Since then, for more than one and half year the application was pending. On 21st September, 2006, when both these applications were placed on board, this Court vide conditional order granted time to serve the respondent. The applicant could not serve the respondent through court process. It appears that affidavit of service is file with acknowledgement of private courier. Pvt. courier service cannot be treated as good service. The order dated 21st September, 2006 is a self-operative order. Since there is no evidence showing proof of service on the respondent, it automatically stood dismissed vide order dated 21st September, 2006.

4. Needless to mention that in view of dismissal of Criminal Application No.226/2006, Criminal Application No.225/2006 does not survive. Both the applications are disposed of accordingly.

JUDGE